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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

UNITED MICROELECTRONICS
CORPORATION, et al.

Defendants.

Case No. 3:18-CR-00465 MMC

**PARTIAL STIPULATION TO PRE-TRIAL
DATES AND ~~PROPOSED~~ ORDER**

Judge: The Honorable Maxine M. Chesney
Courtroom: 7, 19th Floor
Trial Date: February 14, 2022

The United States and defendant Fujian Jinhua Integrated Circuit Co., Ltd. (“Jinhua”) (collectively, the “Parties”), by and through their undersigned counsel, stipulate to the following and respectfully request the Court to enter an order regarding pretrial dates:

WHEREAS, the Court held a telephone hearing last Thursday, April 1, 2021, at which it set this criminal matter to be

- tried commencing on February 14, 2022, at 9:00 am,
- scheduled a pretrial conference on January 18, 2022, at 10:00 am; and
- ordered the Parties to meet and confer on pretrial dates;

WHEREAS, the Parties met and conferred and agreed on all but one pretrial date, as reflected in the table on the next page;

AND WHEREAS, the Parties respectfully submit the one remaining pretrial issue to the Court for resolution;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel for the United States and Jinhua, as follows:

1. The United States and Jinhua stipulate and agree to the pretrial dates in the table on the next page.

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Event	Date
U.S. shall produce all Brady, Giglio, Jencks (excluding grand jury testimony), and Rule 16(a) Materials (except expert disclosures)	June 28, 2021
Government Expert Disclosures (Rule 16(a)(1)(G))	July 2, 2021
Defense Expert Disclosures (Rule 16(b)(1)(C))	August 13, 2021
Government Rebuttal Expert Disclosures	September 10, 2021
Dispositive and Discovery Motion Deadline (including all Rule 12(b)(3) Motions)	September 22, 2021
· Oppositions	October 20, 2021
· Replies	November 3, 2021
· Hearing	November 17, 2021
Government's Disclosure of grand jury testimony of witnesses intended to be called at trial	November 5, 2021
Reciprocal Discovery from Defendants (pursuant to Rule 16(b)(1)(A), (B))	November 19, 2021
Government Exhibit List/Witness List for case-in-chief	December 3, 2021
Motions in Limine/Daubert Motions	December 1, 2021
· Oppositions	December 22, 2021
· Replies	January 4, 2022
· Hearing	January 18, 2022
Pre-Trial Conference Statement pursuant to L.R. 17.1-1 (as modified by the above) as well as:	January 4, 2022
· Joint Factual Stipulations	January 4, 2022
· Proposed Juror Questionnaires	January 4, 2022
· Proposed Voir Dire Questions	January 4, 2022
· Proposed Jury Instructions	January 4, 2022
· Proposed Verdict Forms	January 4, 2022
FINAL PRE-TRIAL CONFERENCE	January 18, 2022
TRIAL	February 14, 2022

2. The parties have only failed to reach agreement on one Pre-Trial date: the deadline for Jinhua to file its exhibit list and witness list for its case-in-chief.

a. Jinhua respectfully requests that the Court set the deadline for Jinhua's Exhibit List/Witness List for: **February 14, 2022** (the first day of trial).

b. The United States requests that the Court set the deadline for Jinhua's Exhibit List/Witness List for: **January 11, 2022**.

3. Jinhua respectfully requests that the Court not require Jinhua to provide its witness and exhibit list to the government until the first day of trial in order to avoid having to disclose its defense strategy before the government even commences its case-in-chief. Because disclosing Jinhua's witness

list, and particularly its exhibit list, will signal to the government how Jinhua plans to defend the case and what it would seek to prove in its case-in-chief, requiring Jinhua to do so would interfere with Jinhua's right to an effective defense. Courts in the Ninth Circuit and around the country have long recognized that defendants should not be required to disclose their "theory of the case" to the government. *United States v. Tomison*, 969 F.Supp 587, 593 (E.D. Cal. 1997) (permitting defendant to file request for Rule 17 subpoena in camera in order "to protect his trial strategy"); *see also, e.g., United States v. Gomez, No. 19-MJ-4160 JHR*, 2019 U.S. Dist. LEXIS 208621, at **5–6 (D.N.M. Dec. 4, 2019) (same); *United States v. Potts*, No. CR H-16-0147-01, 2017 WL 1314193, at *3, n.2 (S.D. Tex. Apr. 6, 2017) (same); *United States v. Johnson*, No. CR 94-0048 SBA, 2008 WL 62281, at *2 (N.D. Cal. Jan. 4, 2008) (same); *United States v. Beckford*, 964 F.Supp. 1010, 1030 (E.D. Va. 1997). As the Ninth Circuit so succinctly opined in *United States v. Hernandez-Meza*, absent express rules to the contrary (which do not exist here), a defendant is "entitled to remain silent as to what defense he will present, and the government must anticipate any issue he might raise." 720 F.3d 760, 764 (9th Cir. 2013) (vacating conviction based, in part, on district court's abuse of discretion in allowing the government to re-open case to address defense theory that prosecutor allegedly failed to anticipate).

4. Compelling Jinhua to disclose its witness and exhibit list by January 11, 2022 (five weeks in advance of trial) as the government requests would unfairly prejudice Jinhua, particularly given the circumstances here. The government has alleged that Jinhua engaged in a broad-ranging conspiracy to steal or copy Micron's trade secrets. But the discovery produced by the government is completely devoid of any evidence supporting that allegation. In fact, the discovery has provided Jinhua with affirmative evidence disproving both the existence of any conspiracy, as well as other key elements of the charged offenses. The early identification of that evidence would enable the government to reimagine and restructure the presentation of its case-in-chief in an effort to somehow address that evidence. But the burden of proof rests solely on the government, as it is a well-established due process right of all defendants in a criminal trial to remain completely silent with no obligation to present any evidence in their defense. An order requiring such an early identification of defense witnesses and exhibits in this case would therefore compromise defendant's due process rights.

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2 5. The United States requests that the Court order the defense to provide its witness and
3 exhibit lists, for three reasons. *First*, this Court has power to order both Parties to disclose their witness
4 and exhibit lists in order to conduct a fair and efficient trial. Corporate defendants such as Jinhua have no
5 Fifth Amendment right against self-incrimination. *Braswell v. United States*, 487 U.S. 99, 102-19 (1988).
6 An amendment to Criminal Rule 16 proposed by the U.S. Supreme Court to Congress in 1974 would have
7 required disclosure of witness lists “by both the defense and prosecution” to (among other things)
8 “minimiz[e] the undesirable effect of surprise at trial, and by otherwise contributing to an accurate
9 determination of the issue of guilt or innocence.” H.R. REP. NO. 247, 94th Cong., 1st Sess. 13 (May 29,
10 1975) (quoting Advisory Committee Note). That amendment was not adopted because “Congress was
11 concerned that a mandatory disclosure rule would discourage government witnesses from testifying and
12 lead to witness intimidation.” *United States v. W.R. Grace*, 526 F.3d 499, 512 (9th Cir. 2008) (*en banc*).
13 Jinhua’s cases say at most that defendants shouldn’t be required to reveal their theory of the case in the
14 context of Criminal Rule 17 subpoenas. But it doesn’t follow from that assertion that this Court lacks
15 power to order the Parties mutually to disclose their witness and exhibit lists – with Jinhua’s revealed only
16 about a month before trial. In fact, the Court presiding over the trial in *United States v. Holmes* ordered
17 an individual defendant to file a witness and exhibit list well in advance of trial, which trial will begin
18 later this summer. *See United States v. Holmes*, 18-00258 EJD (Dkts 484, 650) (orders setting defense
19 witness and exhibit list disclosure, which ordered defendant Holmes to file a witness and exhibit list in
20 September 2020 for trial set in March 20201; the trial has since been continued to July 2021).

21 *Second*, Jinhua has consistently maintained – as recently as last week – that the trial will last many
22 weeks longer than the United States projects the trial to run, which suggests that it intends to present a
23 case-in-chief, and perhaps a lengthy one. Litigating admission of exhibits prior to the beginning of the
24 case ensures a more seamless presentation of the evidence before the jury.

25 *Third*, Jinhua previously stipulated and agreed in the original pretrial schedule to disclose the
26 exhibits and witnesses for its case-in-chief about a month before trial (Dkt. #138 at 2). Accordingly, the
27 United States requests that the Court order Jinhua to disclose the exhibit list and witness lists for its case-
28

1 in-chief on **January 11, 2022**, which is the same number of calendar days (34) and work days (25) before
2 trial as in the original pretrial schedule (Dkt. #138).

3 6. If helpful to the Court, the Parties are available to address the one outstanding issue and
4 address any other questions the Court may have in a telephone hearing.

5 WHEREFORE, the United States and Jinhua respectfully request that the Court
6 enter this Stipulation and the [Proposed] Order below setting pretrial dates. The parties further request
7 the Court to rule on whether and when Jinhua shall file its exhibit and witness list.

8 SO STIPULATED AND AGREED.

9 Dated: April 9, 2021

Respectfully Submitted,

10 STEPHANIE M. HINDS
11 Acting United States Attorney

12 /s/ Laura Vartain Horn
13 LAURA VARTAIN HORN
Assistant United States Attorneys

14 NICHOLAS O. HUNTER
15 STEVEN MARZEN
Trial Attorneys, National Security Division

16 /s/ Matthew E. Sloan
17 JACK P. DICANIO
18 MATTHEW E. SLOAN
19 Attorney for Defendant
20 Fujian Jinhua Integrated Circuit Co. Ltd.


[PROPOSED] ORDER

Good cause appearing, the pretrial dates below are HEREBY SO ORDERED:

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· Proposed Jury Instructions	January 4, 2022
· Proposed Verdict Forms	January 4, 2022
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TRIAL	February 14, 2022

IT IS SO ORDERED.

Dated: April 13, 2021


 MAXINE M. CHESNEY
 United States Senior District Judge